IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.8497 OF 2003

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr. M.M. Vashi with Mr. Santosh Shetty for the petitioner

Mr. R.S. Apte i/b. Mr. M.V. Limaye for Respondent No.1.

Mr. M.S. Lagu, for Respondent NO.7.

Mr. C.R. Sonawane, A.G.P. for Resapondent Nos. 4 to 6.

CORAM: F.I. REBELLO, J.
DATED : JANUARY 18, 2005

P.C.

. Rule. Heard forthwith.

2. The petitioner was appointed in the school run by the respondent management from 16th June, 1987 onwards. He obtained B.Ed. qualification on 31st May, 1991. His services came to be terminated some time on 7th April, 1991. That order was set aside and order issued for reinstatement from 12th October, 1997.

3. The respondent NO.7 was

appointed on 16th June, 1986. He obtained teaching qualifications on 23rd May, 1992. The respondent No.7 has been appointed as Head Master on the basis that he was senior to the petitioner by the impugned order. It may be mentioned that the petitioner based on seniority was appointed as Head Master initially. That was challenged by the respondent NO.7 by making representation to the Education Officer. That representation was allowed and the management was directed to appoint the Respondent No.7 as Head Master which was accordingly done. That order came to be challenged by the petitioner by Writ Petition before this Court being Writ Petition NO.3674 of 2003. It was the contention of the petitioner that he had obtained teaching qualification of B.Ed. in 1991 whereas the contesting Respondent No.7 had obtained qualification in 1992. It was pointed out that was relevant for the purpose of consideration for appointment as Headmaster was the seniority after having obtained teaching qualification. The learned Division Bench considering the contentions observed that if that be so obviously the order passed by the Respondent No.4 cannot be held to be legal and valid and consequently set aside

the same. The matter was remanded to Respondent NO.4 for consideration afresh. A direction was issued that the decision be taken within eight weeks from that date.

4. On remand the respondent NO.4 by his order dated 5th November, 2003 completely ignored the terms of remand made by the learned Division Bench of this Court and proceeded once again to hold that the Respondent No.7 is senior to the petitioner as the total continuous service rendered by him is more than that of the petitioner. The issue raised before the Division Bench namely that what is relevant is the seniority in the category of trained teacher was not at all considered. This either discloses total non-application of mind by Respondent NO.4 or extraneous considerations by respondent No.4 in passing the order.

5. Appointment to the post of Head of a Secondary School is covered by Rule 3(3) read with Schedule "F" of the Maharashtra Employees of Private Schools Rules, 1981 for the purpose of fixation of seniority. The teachers are graded firstly in Grade "D" i.e. those who are untrained. Then in category "C" i.e. those who obtain

teaching qualifications. Appointment to Headmaster is from the category of trained teachers based on the seniority as trained teacher. It will, therefore, be clear, that the seniority in category "D" is distinct and different from category "C". For the purpose of Rule 3(3) what has to be considered is the seniority in category "C". It will, therefore, be clear that the respondent NO.4 apart from not considering the terms f remand has completely ignored the Rules which he was bound to follow.

6. It was sought to be contended on behalf of the respondent No.7 that the petitioner has remedy by way of an Appeal. That question was considered in the earlier petition being Writ Petition NO.3674 of 2003 by holding that the petitioner had a right of filing a Petition. Once that be the case that point cannot be reagitated in the matter of remand. Even otherwise it is always open to a Writ Court in the case where the orders are nullity at law to exercise its extra ordinary jurisdiction. That contention must, therefore, be rejected.Considering the above the following order:-

(i) Rule made absolute in terms of prayer

clause (a). However, as not to disturb the functioning of the school, the respondent No.7 will act as officiating Head Master till the respondent NO.4 decides the matter in terms of this judgment and the Rules within a period of four weeks from today. If the petitioner succeeds it is made clear that the petitioner shall be entitled to all benefits including back wages. Rule made absolute accordingly. No order as to costs. The contentions of each of the parties are left open for consideration.

. Parties/Authorities to act on an ordinary copy of this order duly authenticated by the Personal Asistant/Associate of this Court.

(F.I. REBELLO, J.)